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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6997 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HAJI SULAIMAN @ CHITO SUMAR NIGAMARA

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Petitioner

MS PUNANI APP for Respondent No. 1, 3

RULE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The present petition, preferred under Article 226 of the Constitution of India, is directed against the

order of preventive detention dated 10th July, 1998, made against the petitioner by the District Magistrate, Kachchha, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). Along with the order of detention, the petitioner was also served with the grounds of detention. Though the order of detention is passed as far as back as on 10th July, 1998, it could not be executed till 17th August, 1998.

The order of preventive detention has been made against the petitioner in view of the offences registered against him at various places in the District as stated in the grounds of detention and certain statements of the witnesses made in respect of anti-social activities carried on by the petitioner.

Amongst several grounds of challenge to the order of detention, the learned advocate Mr. Thakkar has also contended that the impugned order of detention is vitiated on account of non-application of mind. He has submitted that in respect of the offences registered against him, the petitioner was taken as an under-trial prisoner and was subsequently released on bail in all the three cases. However, the factum that though the petitioner is alleged to have committed non-bailable offence, he has been released on bail, has not been taken into consideration by the Detaining Authority. Thus, the Detaining Authority has failed to take into consideration the vital factor of the petitioner's having been released on bail which discloses non-application of mind by the Detaining Authority and the order of detention is, therefore, vitiated. In support of his contention, he has relied upon the judgment of this court in the matter of SALAMKHAN BACHCHEKHAN PATHAN VS COMMISSIONER OF POLICE BARODA & ORS (29 (1) GLR, 450). In the matter of Salamkhan (supra), the detenu was taken as under-trial prisoner and was released on bail. However, the Detaining Authority proceeded on the basis that the detenu was an under-trial prisoner and made the order of detention. The Bench relying upon the judgment of the Supreme Court in the matter of ANANT SAKHARAM RAUT VS STATE OF MAHARASHTRA (AIR, 1987, SC, 137) held that the order of detention was vitiated on account of non-application of mind. In the matter of Anant Sakharam (supra) also, the detenu was taken as under-trial prisoner and was subsequently released on bail, which fact had not been considered by the Detaining Authority. The Court, therefore, held that the order of detention was vitiated on account of non-application of mind.

In the present case also, it is undisputed that the petitioner was taken as under-trial prisoner and was subsequently released on bail. The application for release on bail made by the petitioner and the orders made thereon were before the Detaining Authority, however, the same have not been taken into consideration by the Detaining Authority. There is no whisper about the petitioner's having been taken as an under-trial prisoner and his having been released on bail in the grounds of detention. Hence, it must be held that the Detaining Authority has failed to take into consideration all the relevant material while making the order of detention. The impugned order of detention is, therefore, vitiated for want of proper application of mind.

In view of the above discussion, the petition succeeds. The impugned order of detention dated 10th July, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless required in some other case, be released forthwith.

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JOSHI